

# BRIEF UPDATE

FROM THE CONSTRUCTION DIVISION



## A Salutory Reminder

If they ever needed a reminder as to the importance of putting contract documents properly in place property developers, consultants and contractors need look no further than the recent Court of Session case involving **Langstane Housing Association Limited, Riverside Construction (Aberdeen) Limited and others. Here we have a 30 page court decision dealing not with the reasons why a refurbished building partially collapsed in 2001, but simply with the ambiguities raised by one appointment. With hindsight it is easy to say, but had the documentation been properly completed and signed in the first place this could perhaps have all been avoided.**

The case centred on the extent to which standard conditions published by the Association of Consulting Engineers (ACE) were incorporated into the appointment between the pursuer company and its structural engineers and whether a “net contribution” clause fell foul of the Unfair Contract Terms Act 1977.

The merits or otherwise of a net contribution clause are for discussion another day. However the principles in this case apply to all legal appointments and contracts in any sector. The court’s decision highlights the following areas which gave rise to a lengthy preliminary proof:

- If incorporating standard terms of appointment make clear exactly which version or edition of the conditions is being incorporated - an appointment “on the basis of the current ACE Conditions of Service” will only give rise to ambiguity
- If appointed to a panel or framework be aware that the terms may change between the date of the appointment to the panel and the instruction for a particular project
- If using standard terms make sure you complete all entries in the memorandum of agreement or appendix, e.g. monetary limit of liability, amount of insurance or cut off date for claims. Failure to do so could mean that the standard terms are not incorporated
- If there are particularly unusual or onerous terms these should be highlighted by the party seeking to rely upon them
- For clients be wary of limitation clauses which are “hidden” in standard terms
- If there is a net contribution clause in the appointment or collateral warranty ensure that it is properly drafted so as to avoid “black holes” where none of the contracting parties is liable for design or construction defects

For further information, please contact:-



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